IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RFA No.74/2002

Judgment reserved: 17.7.2007.

Date of Decision : July 30,2007.

H.P.S.E.B. & another …Appellants.

-versus-

Mohammad Ali and others. …Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, J.

Whether approved for reporting?[1] *No*

For the Appellants. Mr. Shrawan Dogra, Advocate.

For Respondents No 1 to 3. Mr. Sunil Mohan Goel, Advocate.

For Respondent No.4. Mr. C.B. Singh, Dy. Advocate General.

Sanjay Karol, J.

The appellants have assailed the impugned award dated 20.3.2001, passed by the District Judge, Kullu, H.P,. in Reference Case No.18/99, titled as Mohammad Ali and others versus Collector, Land Acquisition and another.

Appellants land comprising Khasra No. 671/458/1 measuring 0-18-6 bigha and Khasra No.671/458/1/1 measuring 0-2-0 bigha, Khasra No. 670/458/1 measuring 0-3-10 bigha Bagicha Bathal, in village and Phati Hat, Kothi Bajaura, District Kullu, H.P., was acquired in terms of notification dated 19.3.1994, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as '**the Act'**), and vide award dated 28.2.1996 passed by the Collector, the market value of the acquired land (Bagicha Bathal category) was assessed at Rs.51,848/- per bigha.

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[1] *Whether the reporters of the Local Newspapers may be allowed to see the Judgment? No*

Feeling aggrieved and dissatisfied, the appellants filed a Reference Petition under Section 18 of the Act. The District Judge framed the following issues:-

"(1) Whether the petitioner has not been paid market value of the acquired land and if so, what was the market value at the time of notification u/s 4 of the Land Acquisition Act? OPP.

(2) Whether other unacquired land of the petitioner was damaged by the respondents. If so to what effect? OPP.

(3) Whether fruit plants of the petitioner were also acquired. If so what was the price of the same? OPP.

(4) Whether the petition is within limitation? OPP.

(5) Relief. "

The claimants examined one witness whereas the appellants examined four witnesses. The second and third issues were decided in the negative, whereas Issues No.1 and 4 were decided in the affirmative and based on the material on record, the compensation amount was enhanced from Rs.51,848/- to Rs.2,40,000/- per bigha.

The learned counsel for the appellants has assailed the impugned award on the ground that the learned Judge has failed to exercise the jurisdiction vested in him by not considering the copy of the sale deed Ext. RX on the ground that the vendor and vendee were not examined. According to him, the said document ought to have been looked into to determine the fair market value.

The public purpose for which the land was acquired was construction of 132 KV Grid Sub Station, Bajaura/Hatt, District Kullu.

It is settled law that for the acquisition of the land, the land owner is entitled to receive compensation as per market value, as it existed at the time of publication of Notification under Section 4 of the

Act and as such market value has to be determined on the basis of the price which the parties are ready to sell and purchase the land.

Respondent-claimant Mohammad Ali (PW-1) has relied upon the sale deed dated 31.1.1992 whereby two biswas of land was sold for Rs.40,000/- in Phati Bajaura. He has proved that the acquired land is just at a distance of 200 yards from the land under sale transaction and the fertility and utility of both the lands is same. It has got a potential and development into a commercial area.

The defendants' witnesses Tule Ram, RW-1, Chet Ram, RW-2 and Chattar Dass, RW-3 have sought to prove sale instances of land, but however, the same cannot be considered, as according to the said witnesses the transacted land was given by the father to son for construction of a house and same was without consideration and the price was mentioned only for the purpose of registration. In my view, these sale instances sought to be brought on record by the appellants were thus rightly rejected by the Court below. The fourth sale transaction, i.e. Ext. RX was not considered by the Court, as the vendor and the vendee were not examined. With the change in the position of law, the same can be looked into but, however, perusal of the same would show that the same pertains to a totally different village and at a far away place. There is nothing on record to show the similarity in the nature, location and category of the acquired land and the land covered under the said sale transactions. During the course of hearing, it was stated at the Bar by the learned counsel for the respondents that the said village is at a distance of 15 Kms from the acquired land. The said fact is undisputed and also clearly borne out from the record. Therefore, on a careful examination, the same cannot be relied upon, looked into and considered for determining the fair market value of the land in the area.

Since the sale on record proved by the respondents is of the same village and there is similarity with regard to the location, category and class of land as also its potential for growth is duly proved, in my view, it would be a good guidance for assessing the market value of the acquired land, as on the date of issuance of notification under Section 4 of the Act. The land in question is not a big chunk of land so as not to be compared with the sale instances already proved on record. The acquired land is just about 1-4-6 bighas and the sale instance proved on record is just at a distance of 200 yards, which is 0-2-00 bighas. The sale transaction is of the year 1992 and the acquisition is of the year 1994. In any case, it can be presumed that there is an increase in value of land every year.

While making the said sale transaction as basis, the Court below has come to a finding that a deduction of 40% towards developmental charges be also made while determining the fair market value and, therefore, arrived to a figure of Rs.2,40,000/- per bigha and awarded the same accordingly. Since the respondents have not filed any appeal, I am not going into the question as to whether the same, in the facts of the case, could be deducted or not. In my view, the Court below, relying upon the sale instance proved by Mohammad Ali (PW-1) rightly looked into and relied upon the same for the purposes of assessing the fair market value of the acquired land.

I have gone through the record. There is no evidence to the contrary. In fact the respondents have been able to sufficiently prove the fair market value of the land, which has been acquired. It has also come on record that the acquired land has great potential of growth and was having high commercial value as the same is in close proximity of the market place.

For all the aforesaid reasons, I find no irregularity, illegality or perversity in the impugned award. The Court below has rightly exercised the jurisdiction vested in him. The appeal is accordingly dismissed.

(Sanjay Karol),
Judge

July 30, 2007
Gandhi